THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19348 of 2005

01.9.2005

Between:

Smt.Potluri Rajasri, W/o.Late Ram Babu, Hindu,

Old Gajuwaka, Visakhapatnam District.

… Petitioner

AND

The Gajuwaka Municipality, rep. By its Commissioner,

Visakhapatnam District.

… Respondent.

ORDER:

The petitioner is the wife of one Potluri Rambabu and the owner of the premises bearing No.8-13-22, Gajuwaka. She is running a hotel in the name and style of Amaravathi Hotel. The respondent herein issued a notice dated 18.8.2005 purporting to be under Section 228 of A.P. Municipalities Act, 1965 (the Act, for brevity). In the notice, which was issued in the name of the petitioner's husband, it was informed that unauthorized constructions were made in cellar floor of Amaravathi Hotel and the petitioner was advised to remove the structures within seven days from the date of receipt of the said notice. This is assailed in the writ petition.

Heard the learned Counsel for the petitioner and learned Standing Counsel for Municipalities.

As rightly pointed out by the learned Counsel for the petitioner that the power under section 228 of the Act enabling the Commissioner to demolish or alter the building work unlawfully commenced, carried on or completed has to be exercised first by passing an order under subsections (1) and (2) of Section 228 of the Act and then pass an order under subsection (3) of Section 228 of the Act confirming the provisional order under section 228(1) of the Act. At the stage of provisional order, the Commissioner is required to keep in mind the conditionalities mentioned in clause (i) of subsection (1), record a finding thereon and make a provisional order requiring the owner of the building either to make alterations in tune with the building premises, the provisions of the Act, Rules and Byelaws or pass an order refraining the builder from proceeding further with the construction. The said provisional order has to be served with a notice as contemplated under subsection (2) of Section 228

of the Act giving reasonable time to the builder/owner of the building to make a representation. If the owner fails to show cause to the satisfaction of the Commissioner then the provisions of subsection (3) of Section 228 of the Act are enforced.

The impugned notice is silent as to whether it is a provisional order or an order under section 228(3) of the Act though the tone and tenor of the order would show that it is a final order directing the owner to remove the illegal constructions within seven days of the said notice. Be that as it is, after receiving the impugned notice, the petitioner has submitted a representation on 24.8.2005 enclosing the approved plan issued by the Gram Panchayat in 1988 pursuant to which constructions are made. Therefore, it is for the Commissioner now to consider such representation and pass appropriate order within a period of two weeks from the date of receipt of a copy of this order. Till then, no coercive steps shall be taken against the petitioner.

The writ petition, with the above observations and directions, is disposed of. No costs.

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(**V.V.S.RAO,J**)

September 01, 2005.

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